WHITE PINE COUNTY’S RESPONSE TO STATE OF NEVADA’S PETITION FOR RELIEF WITH RESPECT TO POSSIBLE ISSUANCE OF A PARTIAL SAFETY EVALUATION REPORT

On June 14, 2010, the State of Nevada petitioned the Commission ("Petition") to order an immediate suspension of NRC Staff’s ("Staff") work on Safety Evaluation Report (SER) Volume 3 until there is a final Commission decision on DOE’s March 3, 2009 motion to withdraw its license application. The Commission should reject Nevada’s call for immediate suspension or termination of the Staff’s SER work but should grant Nevada’s request for the Commission to direct the presiding Atomic Safety and Licensing Board (CAB-04) to issue an order on each of the ten pending legal issues raised by Nevada. In addition, White Pine County believes that all legal contentions filed in this proceeding which have been briefed and are ready for ASLB resolution should be included in any such order issued by the Commission.

Nevada assumes that Staff, following informal consultation with the Commission, will ultimately decide to issue SER Volume 3 even if DOE’s application is finally withdrawn. If correct, there is no reason for the Commission, in advance of a final ruling on DOE’s motion allowing it to withdraw its application, to issue an order directing Staff to suspend or terminate work on SER Volume 3. If Nevada’s assumption is wrong and Staff would not seek to issue SER
Volume 3 following a final ruling on DOE’s motion, then the relief requested by Nevada is not needed. In any case, it appears Nevada’s petition is untimely.

White Pine County is particularly concerned that the preferred relief requested by Nevada would require the Commission to support Nevada’s attempt to suppress Staff’s evaluation of the safety of the Yucca Mountain project from public review. White Pine County and its residents depend upon NRC to protect public health and safety in a manner which relies upon adjudication of technical and legal information, not politics. If the public perceives that the Commission has become subject to the same political decision-making driving the DOE’s efforts to terminate the Yucca Mountain project, White Pine County residents will lose confidence in the ability of NRC to protect public health and safety. Nevada’s call for immediate suspension or termination of the Staff’s SER work should be rejected by the Commission.

However, the County believes that Nevada’s assertion that the outcome of its legal contentions should be considered by Staff as it completes SER Volume 3 has merit. In fact, White Pine County believes that Staff should consider all legal contentions filed in this proceeding which have been briefed and are therefore ready for resolution as SER Volume 3 is completed. Accordingly, White Pine County agrees with Nevada’s request for the Commission to direct the presiding Atomic Safety and Licensing Board (CAB-04) to prepare a brief opinion on each of the ten pending legal issues raised by Nevada. In addition, White Pine County believes that all legal contentions (including Nevada’s) filed in this proceeding which have been briefed and are ready for ASLB resolution should be included in any such order issued by the Commission.
Respectfully submitted,

Signed electronically by
Richard W. Sears
Nevada Bar No. 5489
District Attorney
White Pine County, Nevada
801 Clark Street
Ely, Nevada 89301
Telephone: (775) 289-8828
Fax: (775) 289-1451
E-mail: rwsears@wpceda.org
In the Matter of

U.S. DEPARTMENT OF ENERGY

Docket No. 63-001

ASLBP No. 09-892-HLW-CAB-04

(High-Level Waste Repository: Pre-Application Matters)

June 22, 2010

CERTIFICATE OF SERVICE

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
Washington, DC 20555-0001

CAB 04  
Thomas S. Moore, Chair  
Administrative Judge  
E-mail: tsm2@nrc.gov

Paul S. Ryerson  
Administrative Judge  
E-mail: psr1@nrc.gov

Richard E. Wardwell  
Administrative Judge  
E-mail: rew@nrc.gov

Patricia Harich  
Email: patricia.harich@nrc.gov

Richard E. Wardwell  
Administrative Judge  
E-mail: rew@nrc.gov

Joseph Deucher  
Email: jhd@nrc.gov

Zachary Kahn  
Email: zxk1@nrc.gov

Erica LaPlante  
Email: eall@nrc.gov

Matthew Rotman  
Email: axw5@nrc.gov

Andrew Welkie  
Email: jgw@nrc.gov

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop - O-16 C1  
Washington, DC 20555-0001  
Hearing Docket  
Email: hearingdocket@nrc.gov

Andrew L. Bates

Anthony C. Eitreim, Esq., Chief Counsel  
Email: ace1@nrc.gov
Daniel J. Graser, LSN Administrator  
Email: dig2@nrc.gov
Lauren Bregman  
Email: lrb1@nrc.gov
Sara Culler

Email: sara.culler@nrc.gov

Joseph Deucher  
Email: jhd@nrc.gov

Patricia Harich  
Email: patricia.harich@nrc.gov

Richard E. Wardwell  
Email: rew@nrc.gov

Zachary Kahn  
Email: zxk1@nrc.gov

Erica LaPlante  
Email: eall@nrc.gov

Matthew Rotman  
Email: axw5@nrc.gov

Andrew Welkie  
Email: jgw@nrc.gov

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop - O-16 C1  
Washington, DC 20555-0001  
Hearing Docket  
Email: hearingdocket@nrc.gov

Andrew L. Bates
Stephen J. Cereghino, Licensing/Nucl Safety  
Email: stephen_cereghino@ymp.gov

Yucca Mountain Project, Licensing Group, DOE/BSC  
6000 Executive Blvd., Suite 608  
North Bethesda, MD 20852  
Edward Borella, Sr Staff, Licensing/Nuclear Safety  
Email: edward_borella@ym.gov  
Danny R. Howard, Sr. Licensing Engineer  
Email: danny_howard@ym.gov

U.S. Department of Energy  
Office of Civilian Radioactive Waste Mgmt  
Office of Repository Development  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321  
Timothy C. Gunter  
Email: timothy_gunter@ym.gov

U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585  
Eric Knox, Associate Director, Systems Operations and External Relations, OCRWM  
Email: eric.knox@hq.doe.gov  
Dong Kim, LSN Project Manager, OCRWM  
Email: dong.kim@rw.doe.gov

Morgan, Lewis, Bockius LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
Lewis Csedrik, Esq.  
Email: lcsedrik@morganlewis.com  
Jay Gutierrez, Esq.  
Email: jgutierrez@morganlewis.com  
Charles B. Moldenhauer, Associate  
Email: cmoldenhauer@morganlewis.com  
Brian P. Oldham, Esq.  
Email: boldham@morganlewis.com  
Thomas Poindexter, Esq.  
Email: tpoindexter@morganlewis.com  
Alex S. Polonsky, Esq.  
Email: apolonsky@morganlewis.com

Thomas A. Schmutz, Esq.  
Email: tschmutz@morganlewis.com

Donald Silverman, Esq.  
Email: dsilverman@morganlewis.com  
Annette M. White, Associate  
Email: e@morganlewis.com  
Paul J. Zaffuts, Esq.  
Email: pzaffuts@morganlewis.com  
Clifford W. Cooper, Paralegal  
Email: ecooper@morganlewis.com  
Shannon Staton, Legal Secretary  
Email: sstaton@morganlewis.com

Carter Ledyard & Milburn, LLP  
Counsel for Lincoln County  
1401 Eye Street, N.W., Suite 300  
Washington, DC 20005  
Barry S. Neuman, Esq.  
Email: neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral and Lander Counties  
1705 Wildcat Lane  
Ogden, UT 84403  
Loreen Pitchford, LSN Coordinator for Lander County  
Email: lpitchford@comcast.net

Robert List  
Armstrong Teasdale LLP  
1975 Village Center Circle, Suite 140  
Las Vegas, NV 89134-6237  
Email: rlist@armstrongteasdale.com

City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV 89101  
Margaret Plaster, Management Analyst  
Email: mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV 89155  
Irene Navis  
Email: iln@co.clark.nv.us
Lea Rasura-Alfano, Coordinator
Email: jcciac@co.lincoln.nv.us

Nye County Regulatory/Licensing Adv.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy
Email: mrmurphy@chamberscable.com

Mineral County Board of Commissioners
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Administrator
Office of Nuclear Projects
Email: yuccainfo@mineralcountynv.org

Michael C. Berger
233 E. Carrillo St., Suite B
Santa Barbara, CA 93101
Email: mberger@bsglaw.net

State of Nevada
100 N. Carson Street
Carson City, NV 89710
Marta Adams
Email: madams@ag.state.nv.us

Robert S. Hanna
233 E. Carrillo St., Suite B
Santa Barbara, CA 93101
Email: rshanna@bsglaw.net

White Pine County (NV) Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
(Melanie Martinez, Senior Mgmt. Assist.)
Email: wpnucwst1@mwpower.net

Environmental Protection Agency
Ray Clark
Email: clark.ray@epa.gov

Fredericks & Peebles, L.L.P.
1001 Second Street
Sacramento, CA 95814
916-441-2700
FAX 916-441-2067
Darcie L. Houck
Email: dhouck@ndnlaw.com

John M. Peebles
Email: jpeebles@ndnlaw.com
Joe Kennedy, Chairman
Email: chairman@timbisha.org
Barbara Durham
Tribal Historic Preservation Officer
Email: dvdurbarbara@netscape.com

Intertech Services Corporation
(for Lincoln County)
P.O. Box 2008
Carson City, NV 89702-2008
Dr. Mike Baughman
Email: bigboff@aol.com

Susan Durbin

Nye County Department of Natural Resources & Federal Facilities
2101 E. Calvada Blvd., Suite 100
Pahrump, NV 89048
David Swanson
Email: dswanson@nyecounty.net

Lincoln County Nuclear Oversight Prgm
100 Depot Ave., Suite 15; P.O. Box 1068
Caliente, NV 89008-1068

Joe Kennedy, Chairman
Email: chairman@timbisha.org
Barbara Durham
Tribal Historic Preservation Officer
Email: dvdurbarbara@netscape.com

Nuclear Waste Technical Review Board
Joyce Dory
Email: dory@nwtrb.gov

Susan Durbin

Intertech Services Corporation
(for Lincoln County)
P.O. Box 2008
Carson City, NV 89702-2008
Dr. Mike Baughman
Email: bigboff@aol.com

Nye County Department of Natural Resources & Federal Facilities
2101 E. Calvada Blvd., Suite 100
Pahrump, NV 89048
David Swanson
Email: dswanson@nyecounty.net

Lincoln County Nuclear Oversight Prgm
100 Depot Ave., Suite 15; P.O. Box 1068
Caliente, NV 89008-1068

Joe Kennedy, Chairman
Email: chairman@timbisha.org
Barbara Durham
Tribal Historic Preservation Officer
Email: dvdurbarbara@netscape.com

Susan Durbin
Alexander, Berkey, Williams & Weathers
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey
Email: cberkey@abwwlaw.com
Scott W. Williams
Email: swilliams@abwwlaw.com
Rovianne A. Leigh
Email: rleigh@abwwlaw.com

Signed (electronically) by,
Richard W. Sears
Nevada Bar No. 5489
District Attorney
White Pine County, Nevada
801 Clark Street
Ely, Nevada 89301
Telephone: (775)289-8828
Fax: (775)289-1451
E-mail: rwsears@wpcda.org